(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a permanent rule in accordance with the rulemaking requirements of this chapter. [I.C., § 67-5226, as added by 1992, ch. 263, § 16, p. 783; am. 1995, ch. 196, § 2, p. 686.]

Compiler's notes. Sections 1 and 3 of S.L. 1995, ch. 196 are compiled as §§ 67-5224 and 67-5291, respectively.

67-5227. Variance between final rule and proposed rule. — An agency may adopt a final rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the final rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject of agency action in order for such members of the public to determine whether their interests could be affected by agency action on that subject. [I.C., § 67-5227, as added by 1992, ch. 263, § 17, p. 783; am. 1993, ch. 216, § 106, p. 587.]

Compiler's notes. Sections 105 and 107 of S.L. 1993, ch. 216 are compiled as §§ 67-5221 and 67-5241, respectively.

67-5228. Exemption from regular rulemaking procedures. — An agency may amend a final rule to correct typographical errors, transcription errors, or clerical errors when the amendments are approved by the coordinator. Such amendments become effective without compliance with regular rulemaking procedures upon publication in the bulletin. [I.C., § 67-5228, as added by 1992, ch. 263, § 18, p. 783.]

67-5229. Incorporation by reference. — (1) An agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of a code, standard or rule which has been adopted by an agency of the state or of the United States or by any nationally recognized organization or association, if the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The agency shall, as part of the rulemaking:

(a) note where copies of the incorporated material may be obtained; and

(b) if otherwise unavailable, provide one (1) copy of the incorporated material to the state law library and to the coordinator.

(2) If the agency subsequently wishes to incorporate amendments to previously incorporated material, it shall comply with the rulemaking procedures of this chapter. [I.C., § 67-5203A, as added by 1980, ch. 212, § 2, p. 481; am. and redesig. 1992, ch. 263, § 19, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5203A and was amended and redesignated as § 67-5229 by § 19 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 3 of S.L. 1980, ch. 212 is compiled as § 67-5217.

Section 20 of S.L. 1992, ch. 263 contained a repeal.

67-5230. Petition for adoption of rules. — (1) Any person may petition an agency requesting the adoption, amendment, or repeal of a rule. The agency shall either:

(a) deny the petition in writing, stating its reasons for the denial, or

(b) initiate rulemaking proceedings in accordance with this chapter.

The agency shall deny the petition or initiate rulemaking proceedings in accordance with this chapter within twenty-eight (28) days after submission of the petition, unless the agency's rules are adopted by a multimember agency board or commission whose members are not full-time officers or employees of the state, in which case the agency shall take action on the petition no later than the first regularly scheduled meeting of that board or commission that takes place seven (7) or more days after submission of the petition.

(2) An agency decision denying a petition is a final agency action. [1965, ch. 273, § 6, p. 701; am. and redesig. 1992, ch. 263, § 21, p. 783; am. 1995, ch. 270, § 2, p. 868.]

Compiler's notes. This section was formerly compiled as § 67-5206 and was amended and redesignated as § 67-5230 by § 21 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 20 of S.L. 1992, ch. 263, contained a repeal and § 19 is compiled as § 67-5229.

Sections 1 and 3 of S.L. 1995, ch. 270 are compiled as §§ 67-5225 and 67-5250, respectively.

67-5231. Invalidity of rules not adopted in compliance with this chapter — Time limitation. — (1) Rules may be promulgated by an agency only when specifically authorized by statute. A final rule adopted after July 1, 1993, is voidable unless adopted in substantial compliance with the requirements of this chapter.

(2) A proceeding, either administrative or judicial, to contest any rule on the ground of noncompliance with the procedural requirements of this chapter must be commenced within two (2) years from the effective date of the rule. [I.C., § 67-5231, as added by 1992, ch. 263, § 22, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5273.

67-5232. Declaratory rulings by agencies. — (1) Any person may petition an agency for a declaratory ruling as to the applicability of any statutory provision or of any rule administered by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action. [1965, ch. 273, § 8, p. 701; am. and redesig. 1992, ch. 263, § 23, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5208 and was amended and redesignated as § 67-5232 by § 23 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 24 of S.L. 1992, ch. 263 is compiled as § 67-5240.

Sec. to sec. ref. This section is referred to in § 67-5201.

67-5233 — 67-5239. [Reserved.]

67-5240. Contested cases. — A proceeding by an agency, other than the public utilities commission or the industrial commission, that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law. [I.C., § 67-5240, as added by 1992, ch. 263, § 24, p. 783.]

Compiler's notes. Section 23 of S.L. 1992, ch. 263, is compiled as § 67-5232.

Sec. to sec. ref. Sections 67-5240 through 67-5255 are referred to in § 67-5206.

67-5241. Informal disposition. — (1) Unless prohibited by other provisions of law:

(a) an agency or a presiding officer may decline to initiate a contested case;

(b) any part of the evidence in a contested case may be received in written form if doing so will expedite the case without substantially prejudicing the interests of any party;

(c) informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement, or consent order. Informal settlement of matters is to be encouraged;

(d) the parties may stipulate as to the facts, reserving the right to appeal to a court of competent jurisdiction on issues of law.

(2) An agency or a presiding officer may request such additional information as required to decide whether to initiate or to decide a contested case as provided in subsection (1) of this section.

(3) If an agency or a presiding officer declines to initiate or decide a contested case under the provisions of this section, the agency or the officer shall furnish a brief statement of the reasons for the decision to all persons involved. This subsection does not apply to investigations or inquiries directed to or performed by law enforcement agencies defined in section 9-337(5), Idaho Code.

(4) The agency may not abdicate its responsibility for any informal disposition of a contested case. Disposition of a contested case as provided in this section is a final agency action. [I.C., § 67-5241, as added by 1992, ch. 263, § 25, p. 783; am. 1993, ch. 216, § 107, p. 587.]

Compiler's notes. Sections 106 and 108 of S.L. 1993, ch. 216 are compiled as §§ 67-5227 and 67-5250, respectively.

67-5242. Procedure at hearing. — (1) In a contested case, all parties shall receive notice that shall include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority under which the hearing is to be held; and

(c) a short and plain statement of the matters asserted or the issues involved.

(2) The agency head, one (1) or more members of the agency head, or one (1) or more hearing officers may, in the discretion of the agency head, be the presiding officer at the hearing.

(3) At the hearing, the presiding officer:

(a) Shall regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary.

(b) Shall afford all parties the opportunity to respond and present evidence and argument on all issues involved, except as restricted by a limited grant of intervention or by a prehearing order.

(c) May give nonparties an opportunity to present oral or written statements. If the presiding officer proposes to consider a statement by a nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the presiding officer shall require the statement to be given under oath or affirmation.

(d) Shall cause the hearing to be recorded at the agency's expense. Any party, at that party's expense, may have a transcript prepared or may cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(e) May conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) If a party fails to attend any stage of a contested case, the presiding officer may serve upon all parties notice of a proposed default order. The notice shall include a statement of the grounds for the proposed order. Within seven (7) days after service of the proposed order, the party against whom it was issued may file a written petition requesting the proposed order to be vacated. The petition shall state the grounds relied upon. The presiding officer shall either issue or vacate the default order promptly after the expiration of the time within which the party may file a petition. If the presiding officer issues a default order, the officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. [1965, ch. 273, § 9, p. 701; am. and redesig. 1992, ch. 263, § 26, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5209 and was amended and redesignated as § 67-5242 by § 26 of S.L. 1992, ch. 263, effective July 1, 1993.

Sec. to sec. ref. This section is referred to in § 67-5249.

Cited in: Swisher v. State Dep't of Envtl. & Community Servs., 98 Idaho 565, 569 P.2d 910 (1977); Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

ANALYSIS

Hearing.
Notice.
Official notice.
Prejudicial error.
Venue.

Hearing.

While a public utility is entitled to a hear-

ing prior to a commission determination that its filed rates are improper, it is not so entitled where the commission simply dismisses a defective application for a rate increase without prejudice to refiling of the corrected application. Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n, 98 Idaho 718, 571 P.2d 1119 (1977).

The Tax Commission's decision to refer for prosecution a case involving failure to file a state income tax return did not trigger the hearing requirement of this section. State v. Staples, 112 Idaho 105, 730 P.2d 1025 (Ct. App. 1986).

Notice.

Where the notice proposed to suspend the defendants' license for 60 days for violation of the gambling provision, the Idaho Department of Law Enforcement's notice of hearing reasonably informed the defendants of the issues and consequences confronting them at the hearing. State, Dep't of Law Enforcement v. Engberg, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The purpose of the notice requirement in this section is to inform parties of the particular facts and issues to be addressed in the hearing, allowing an opportunity to prepare a defense. State ex rel. Richardson v. Pierandozzi, 117 Idaho 1, 784 P.2d 331 (1989).

Where, in an action to revoke defendants' liquor license a petition to revoke and a notice of revocation were personally served upon defendants more than four months before the hearing, and where three weeks before the hearing, a notice of hearing was mailed to defendants, taken together, the information contained in the three documents satisfied the notice requirement of the section. State ex rel. Richardson v. Pierandozzi, 117 Idaho 1, 784 P.2d 331 (1989).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene this section and § 67-5210 as to matters which may be officially noticed in a proceeding. Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n, 102 Idaho 175, 627 P.2d 804 (1981).

Prejudicial Error.

A claimant's contention that the record failed to disclose whether the appeals examiner considered any state memoranda or data was without merit, where the claimant failed to show whether any such material even existed, and she failed to show prejudicial error. Guillard v. Department of Emp., 100 Idaho 647, 603 P.2d 981 (1979).

Venue.

Where there is no particularized showing that unfair prejudice resulted from the agency's choice of venue, the Court of Appeals will not disturb its eventual decisions. Pence v. Idaho State Horse Racing Comm'n, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

This section provides only that an agency must provide notice of the time, place, and nature of a hearing. It does not fix venue in particular locations. Pence v. Idaho State Horse Racing Comm'n, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Opinions of Attorney General. This act applies to contested cases; 18 month permanency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 USC 675(5) do not fall within the scope of "contested cases" as defined in the Administrative Procedure Act. OAG 88-9.

Collateral References. Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 552.

Counsel's absence because of attendance on legislature as ground for continuance. 49 A.L.R.2d 1073.

Comment note on right to assistance by counsel in administrative proceedings. 33 A.L.R.3d 229.

Exceptions under 5 USC § 553(b)(A) and § 553 (b)(B) to notice requirements of Administrative Procedure Act rule making provisions. 45 A.L.R. Fed. 12.

67-5243. Orders not issued by agency head. — (1) If the presiding officer is not the agency head, the presiding officer shall issue either:

(a) a recommended order, which becomes a final order only after review by the agency head in accordance with section 67-5244, Idaho Code; or

(b) a preliminary order, which becomes a final order unless reviewed in accordance with section 67-5245, Idaho Code.

(2) The order shall state whether it is a preliminary order or a recommended order.

(3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order

within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition. [I.C., § 67-5243, as added by 1992, ch. 263, § 27, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5245.

67-5244. Review of recommended orders. — (1) A recommended order shall include a statement of the schedule for review of that order by the agency head or his designee. The agency head shall allow all parties to file exceptions to the recommended order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(2) Unless otherwise required, the agency head shall either:

(a) issue a final order in writing within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties or for good cause shown;

(b) remand the matter for additional hearings; or

(c) hold additional hearings.

(3) The agency head on review of the recommended decision shall exercise all the decision-making power that he would have had if the agency head had presided over the hearing. [I.C., § 67-5244, as added by 1992, ch. 263, § 28, p. 783.]

Compiler's notes. Section 29 of S.L. 1992, ch. 263 contained a repeal.

67-5245. Review of preliminary orders. — (1) A preliminary order shall include:

(a) a statement that the order will become a final order without further notice; and

(b) the actions necessary to obtain administrative review of the preliminary order.

(2) The agency head, upon his own motion may, or, upon motion by any party shall, review a preliminary order, except to the extent that:

(a) another statute precludes or limits agency review of the preliminary order; or

(b) the agency head has delegated his authority to review preliminary orders to one (1) or more persons.

(3) A petition for review of a preliminary order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provision of law. If the agency head on his own motion decides to review a preliminary order, the agency head shall give written notice within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provisions of law. The fourteen (14) day period for filing of notice is tolled by the filing of a petition for reconsideration under section 67-5243(3), Idaho Code.

(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to file exceptions to the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

(a) issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;

(b) remand the matter for additional hearings; or

(c) hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing. [I.C., § 67-5245, as added by 1992, ch. 263, § 30, p. 783.]

Compiler's notes. Section 29 of S.L. 1992, ch. 263 contained a repeal.

Sec. to sec. ref. This section is referred to in § 67-5243.

67-5246. Final orders — Effectiveness of final orders. — (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code. [I.C., § 67-5246, as added by 1992, ch. 263, § 31, p. 783.]

67-5247. Emergency proceedings. — (1) An agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The agency shall take only such actions as are necessary to prevent or avoid the immediate danger that justifies the use of emergency contested cases.

(2) The agency shall issue an order, including a brief, reasoned statement to justify both the decision that an immediate danger exists and the decision to take the specific action. When appropriate, the order shall include findings of fact and conclusions of law.

(3) The agency shall give such notice as is reasonable to persons who are required to comply with the order. The order is effective when issued.

(4) After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(5) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency contested cases or for judicial review thereof. [I.C., § 67-5247, as added by 1992, ch. 263, § 32, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5254.

67-5248. Contents of orders. — (1) An order must be in writing and shall include:

(a) a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.

(b) a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.

(2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

(3) All parties to the contested case shall be provided with a copy of the order. [1965, ch. 273, § 12, p. 701; am. and redesig. 1992, ch. 263, § 33, p. 783.]

Compiler's notes. This section was formerly compiled as § 67-5212 and was amended and redesignated as § 67-5248 by § 33 of S.L. 1992, ch. 263, effective July 1, 1993.

Cited in: Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973).

ANALYSIS

Conclusion of law.
Final decisions.
Fitness of lawyers.
Modifying conditional use permits.
Notice.
Requirements.

Conclusion of Law.

A determination by the department of law enforcement that a driver "refused to take a chemical test of his breath and blood to determine the alcoholic content of his blood" was a conclusion of law and not a finding of fact and the determination being unsupported by findings of fact will be set aside. Mills v. Holliday, 94 Idaho 17, 480 P.2d 611 (1971).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and thus they were not final decisions and did not trigger the limitation period provided for in subsection (b) of § 67-5215. Soloaga v. Bannock County, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by this section since this section does not apply to the State Bar Board of Commissioners because they are a part of the judicial rather than the executive branch. Dexter v. Idaho State Bd. of Comm'rs, 116 Idaho 790, 780 P.2d 112 (1989).

Modifying Conditional Use Permits.

Given the fact that counties have been granted the power to grant conditional use permits, coupled with the need for flexibility in land use planning and the lack of a prohibition on when conditions may be changed, counties have the authority to grant new conditional use permits which modify existing permits. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

There is no basis in the statutory scheme for requiring proof of changed circumstances before a modification to an existing conditional use permit may be ordered. Chambers v. Kootenai County Bd. of Comm'rs, 125 Idaho 115, 867 P.2d 989 (1994).

Notice.

Where there was no indication or certificate in the record that a speed letter mailed to plaintiff's counsel was in fact mailed or served, the uncertainty of the notice given requires that the notice be held defective and inadequate to start the running of the appeal time. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

Requirements.

A party is entitled to a final decision containing findings of fact and conclusions of law before seeking judicial review, and where a transcript did not contain either a final decision or the required findings of fact and conclusions of law the district court erred in finding that one commissioner's motion to deny medical indigency assistance, made at the conclusion of a hearing regarding an application for such assistance and upon which no vote was taken, constituted notice of the commissioner's decision, and the district court also erred by dismissing the appeal as untimely. Cortez v. Owyhee County, 117 Idaho 1034, 793 P.2d 707 (1990).

67-5249. Agency record. — (1) An agency shall maintain an official record of each contested case under this chapter for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law.

(2) The record shall include:

(a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;

(b) evidence received or considered;

(c) a statement of matters officially noticed;

(d) offers of proof and objections and rulings thereon;

(e) the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;

(f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and

(g) any recommended order, preliminary order, final order, or order on reconsideration.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in contested cases under this chapter or for judicial review thereof. [I.C., § 67-5249, as added by 1992, ch. 263, § 34, p. 783.]

Sec. to sec. ref. This section is referred to in § 67-5275.

67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents. — (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority. [1965, ch. 273, § 2, p. 701; am. 1980, ch. 204, § 1, p. 468; am. and redesig. 1992, ch. 263, § 35, p. 783; am. 1993, ch. 216, § 108, p. 587; am. 1995, ch. 270, § 3, p. 868.]

Compiler's notes. This section was formerly compiled as § 67-5202 and was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

Sections 107 and 109 of S.L. 1993, ch. 216 are compiled as §§ 67-5241 and 67-5252, respectively.

Sections 2 and 4 of S.L. 1995, ch. 270 are compiled as §§ 67-5230 and 67-5272, respectively.

ANALYSIS

Availability for public inspection.
Public utilities commission.

Availability for Public Inspection.

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to